

February 18, 2004

NORTH BERWICK WATER DISTRICT
Request for Approval of Transfer of Assets to
Lease space to a Cellular Phone Company

ORDER

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

Summary of Order

We allow the North Berwick Water District (District) to lease space to Omnipoint Holdings, Inc. (Omnipoint), a Delaware Corporation. The lease provides for the installation of antennas at or near the top of the District's Lebanon Road Standpipe along with a concrete equipment pad covering a ground area of 225 square feet and access rights. The lease is for a term of 5 years and Omnipoint has the right to automatically extend the lease for five additional five-year terms.

Background

The District is organized under the laws of the State of Maine pursuant to Ch.54, Private and Special Laws, 1981, and is a public utility authorized to serve and provide water services in the Town of North Berwick. The District owns the land around its Lebanon Road standpipe.

On September 2, 2003, the District filed with the Commission its request for approval of its Lease with Option Agreement with Omnipoint to lease rights to erect antennas on the Lebanon Road standpipe along with a concrete equipment pad of approximately 225 square feet and rights to access those facilities. The Tenant will pay the District \$1,300 per month for the first year of the initial lease term. The rent will increase by 3% over the prior year's rent each year of the initial term and any renewals thereto. Access to the site will be controlled by a gate and Omnipoint has agreed not to use hazardous substances on the property in violation of any applicable law. The agreement will enable the District to provide maximum protection to its facilities while deriving income.

Conclusion

Under 35-A M.R.S.A. §1101, a public utility must secure an order of authorization from the Commission before it may lease any part of its property that is necessary or useful in the performance of its duties to the public. The District has applied for authorization to lease antenna space on its standpipe and a small area of land and access thereto. Under the lease agreement the District will derive revenue to offset a portion of its operating expenses while ensuring that Omnipoint's facilities will not

interfere with the District's use and operation of the standpipe. The Commission will approve the lease because it appears to be in the best interest of the ratepayers of the water system.

Accordingly, we

O R D E R

1. That the North Berwick Water District lease and option agreement with Omnipoint Holding, Inc. is hereby approved.

2. That the North Berwick Water District shall include as part of its Annual Report to the Commission a description of the transaction and an itemized list of all income and expenses associated with the transaction during that calendar year.

Dated at Augusta, Maine, this 18th day of February, 2004.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Diamond
 Reishus

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.